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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,026	08/10/2006	Harald Buchegger	BUCHEGGER-1 PCT	4165
25889	7590	02/10/2009		
COLLARD & ROE, P.C. 1077 NORTHERN BOULEVARD ROSLYN, NY 11576			EXAMINER SULLIVAN, MATTHEW J	
			ART UNIT	PAPER NUMBER
			3677	
			MAIL DATE	DELIVERY MODE
			02/10/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/589,026	<b>Applicant(s)</b> BUCHEGGER, HARALD	
	<b>Examiner</b> MATTHEW SULLIVAN	<b>Art Unit</b> 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 November 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments filed 11/6/08 have been fully considered but they are not persuasive.

Applicant has argued that housing formed by elements 1, 1' in Montagner does not substantially constitute "housing bores" as recited in the Applicant's claims. Examiner wishes to remind the Applicant that Examiner is obliged to take the broadest reasonable interpretation when evaluating applications and prior art. Examiner therefore maintains that the bore taught Montagner (see fig. 6) can be reasonably interpreted to be separate bores for the individual springs (see fig. 1) when the bore is bisected by elements 2 and 3. Furthermore, Examiner could argue that it would be obvious to provide individual bores because a duplication of parts is well within the ordinary skill of one in the art barring any unforeseen result, *In re Harza*. However, Examiner maintains that the prior art sufficiently reads upon the Applicant's claims as demonstrated in the previous rejection dated 8/6/08.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a

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reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Examiner further submits that the amendments submitted by the Applicant are not substantive and in no way put the claims in better condition for allowance.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Montagner, U.S. Patent 6,161,254 (12/19/00) in view of Schuchard, U.S. Patent 6,505,933 (1/14/03).**

Montagner teaches a hinge part (7) held in a displaceable manner in a longitudinal direction of the temple in a housing (1) on the temple side, a fixture (3', 3'') which projects from the hinge part in the direction of displacement, engages in an opening in the housing (1) and comprising a fixture rod (3) and a transversal bar at the end of the fixture rod (5, 5'), two helical springs provided laterally adjacent the fixture rod (6) and parallel thereto inserted into a housing bore (fig. 6, 1') and resting with their ends at the hinge side on an abutment associated with the housing (Col 4, Lines 43-48) and open toward the housing opening for the fixture rod. Montagner does not teach the housing bores each receiving a locking element forming the abutment for the helical spring. Schuchard does teach a locking element (11) forming the abutment for a helical

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spring (10). At the time of the invention it would have been obvious to one of ordinary skill in the art to provide Montagner with the features as taught by Schuchard because a replaceable locking element would allow the abutment to be replaced if the abutment were to wear out due to high cycling.

**Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Montagner and Schuchard as applied to claim 1 above, and further in view of Montalban, U.S. Patent 6,152,562 (11/28/00).**

All the aspects of the instant invention are disclosed above but for the locking element being screwed into the housing bore. Montalban does teach a locking element (24) being screwed into a housing bore (Col 3, Lines 65-67). At the time of the invention it would have been obvious to one of ordinary skill in the art to provide Montagner and Schuchard with the features as taught by Montalban because a screw fastening for the locking element is well known in the art and would be easily to install and remove.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW SULLIVAN whose telephone number is (571)270-5218. The examiner can normally be reached on Mon-Thurs, 8:00 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Victor D. Batson can be reached on 571-272-6987. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Victor Batson/  
Supervisory Patent Examiner, Art Unit 3677

/MATTHEW SULLIVAN/  
Examiner, Art Unit 3677

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